

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-207306.2

DATE: October 20, 1982

MATTER OF: NonPublic Educational Services, Inc.

DIGEST:

Cancellation of IFB after bid opening was proper in view of the fact that contracting officer discovered that Service Contract Act was applicable to services being procured and wage determinations and clauses relevant to Service Contract Act had not been incorporated into IFB. Failure to include wage determination and relevant clauses presented a "compelling reason" to cancel and reissue IFB which incorporates Service Contract Act provisions.

NonPublic Educational Services, Inc. (NESI), protests the cancellation of invitation for bids (IFB) No. DAKFO3-82-B-0052 by the Department of the Army. The IFB was issued on April 6, 1982, for the procurement of monitors for 24 soldier skill centers at Fort Ord, Fort Hunter Liggett and Presidio of Monterey, California.

Bids were opened on April 26. After bid opening, a protest was filed in our Office by D. J. Findley and Company (Findley) alleging that the contract was subject to the Service Contract Act and should have contained the appropriate wage determinations. On May 11, the contracting officer determined that the Service Contract Act did apply to these services after consulting with personnel at the Department of Labor. The contracting officer therefore canceled the IFB on May 26. Subsequently, Findley withdrew its protest.

NESI protests that the cancellation was improper because the Findley protest was untimely since it was filed after bid opening. NESI also questions the motivations of Findley in protesting after bidding for the contract.

The protest is without merit and, therefore, is denied.

The determination whether a proposed contract is subject to the Service Contract Act is for the procuring activity, and it will not be questioned by our Office unless it is shown to be unreasonable. A & C Building and Industrial Maintenance Corporation, B-193047, April 13, 1979, 79-1 CPD 265. Here, the nonpersonal services to be performed included, among other things, supervising and instructing students in the use of equipment and supplies and controlling the use of supplies and equipment. A wage hour analyst at the Department of Labor advised the contracting officer that such personnel are not exempt from coverage of the Service Contract Act and that a wage determination would have to be issued for this procurement. In view of the description of the work to be performed and the Department of Labor advice that the Service Contract Act was applicable, we cannot find the contracting officer's determination to be unreasonable.

We recognize that the rejection of all bids after bid opening tends to discourage competition because it exposes all bids without award and causes bidders to expend money and manpower in preparing bids without the possibility of acceptance. It is primarily for these reasons that procurement regulations require that a "compelling reason" must exist in order to cancel a solicitation after bid opening. A & C Building and Industrial Maintenance Corporation, supra.

Affording protection to service workers and thereby furthering the purposes of the Service Contract Act may be regarded as a "compelling reason" to cancel an IFB after bid opening in order to resolicit, incorporating the wage determinations and contract clauses relevant to the Service Contract Act. A & C Building and Industrial Maintenance Corporation, supra. In view thereof, we consider the cancellation to have been proper in this case.

In our opinion, the motivation of Findley in protesting is irrelevant. Regardless of Findley's motives or the timeliness of Findley's protest, once the omission of Service Contract Act clauses was brought to the contracting officer's attention, the contracting officer was acting within the scope of his authority in canceling the IFB.

Accordingly, the protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the printed title.

Acting Comptroller General
of the United States